Supreme Court, U.S.
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NO. 85-373

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CHARLES REED AND ROLAND DUTY,

PETITIONERS

V.

JAMES TERRELL, SUE RAYBOLD, BILL LOGUE, JOE JOHNSON AND THE STATE BAR OF TEXAS,

RESPONDENTS

ON WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE
FIFTH CIRCUIT

BRIEF FOR RESPONDENT JOE JOHNSON IN OPPOSITION TO CERTIORARI

COUNSEL OF RECORD:

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REASONS FOR DENYING THE WRIT

The rationale of the Petitioners' position to justify this Court to grant a Writ of Certiorari to the Fifth Circuit Court of Appeals is that the Respondents acted in conjunction with each other to cause Texas Family Code §11.18(a) to be enforced against them as a class, consisting of husbands and ex-husbands, in deprivation of their "civil rights" under 42 U.S.C. §1983. It is fundamentally clear that "a plaintiff may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action." Hagerty v. Succession of Clements, 749 Fed.2d 217, 220 (Fifth Circuit, 1984).

Petitioners further attempt to seek justification for the granting of the Writ by alleging that the state statute is unconstitutional and therefore, should automatically be eligible for review by this Court. Once again, it is fundamentally clear to

this Respondent that state court final judgments cannot be reviewed by this Court until all of the state appellate remedies have been exhausted. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed. 2nd 206, 222-23 (1983). Also, please see the Fifth Circuit's Opinion in this cause and the cases cited therein which has been attached to other briefs filed herein and to which reference is made for all purposes.

NO CAUSE OF ACTION ON WHICH FEDERAL COURT MAY GRANT RELIEF AGAINST THIS RESPONDENT

This Respondent is the duly elected and certified District Clerk of McLennan County, Texas. By Texas statute (RS 1899) and State Constitution (Art. V, Sec. 9), he is an officer of the court and is obligated to file and record in his office the everyday business of the four District Courts in his county. In the original causes upon which this

federal appeal is based and in Respondent's official capacity, he was given certain Orders duly entered by the State District Courts and he properly filed said Orders and issued whatever writs and took whatever other action the Orders required him to take. Further, at no time did he attempt to interpret or take it upon himself to enforce Texas Family Code Ann. §11.18(a) and there is no allegation to this effect in the Petitioners' complaint.

This Respondent stands ready at all times to abide by the Orders of any court having legal jurisdiction over the operation of his office. De Los Fuentes v. MacDonald, 85 Tex. 132, 20 S.W.43; Binge v. Foster, 47 S.W.2d 862.

CONCLUSION

It is this Respondent's opinion that the rules of law applicable to this case, federal, state and statutory, compel a finding that the application for

Writ of Certiorari sought herein is frivolous on its face as it relates to him since there is nothing in the Petitioners' Application to this Court or their original complaint that is evidentiary or can be argued on its merits. Hagerty v. Succession of Clements, supra, 749 F.2d 222. This Respondent has done nothing to harm the Petitioners herein but has only performed his duties as required by law.

Therefore, it is submitted to this Court that the Petition of Writ of Certiorari to the Fifth Circuit Court of Appeals should in all things be denied and should this Court believe it appropriate, pursuant to 42 U.S.C. §1988 and U.S. Sup. Ct. Rule 49.2, attorneys fees in favor of this Respondent should be awarded against the Petitioners.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Donald O. Hall, counsel of record for Respondent, Joe Johnson, do hereby certify that on this 21st day of October, 1985, three (3) copies of the above and foregoing Brief for Respondent were served by mail on the following:

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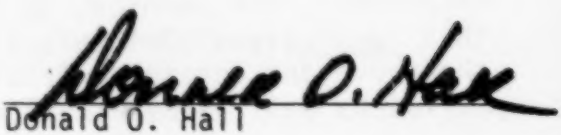

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